

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

H. THOMAS MORAN, II, Receiver of  
the Assets of LifeTime Capital, Inc. and  
Certain Affiliated Persons and Entities,

Plaintiff,

vs.

HOWARD F. WUNDERLICH, M.D.,  
*et al.*,

Defendants.

:  
:  
:  
:  
:  
:  
:  
:

Case No. 3:05CV00073

District Judge Walter Herbert Rice  
Magistrate Judge Sharon L. Ovington

---

**DECISION AND ENTRY ADOPTING IN FULL THE REPORT AND  
RECOMMENDATIONS FILED ON APRIL 6, 2007 (Doc. #64); AND REMANDING THIS  
CASE TO THE UNITED STATES MAGISTRATE JUDGE FOR FURTHER  
PROCEEDINGS**

---

The Court has conducted a de novo review of the Report and Recommendations of United States Magistrate Judge Sharon L. Ovington (Doc. #64), to whom this case was originally referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) has expired, hereby **ADOPTS** said Report and Recommendations.

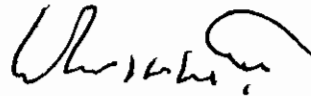
It is therefore **ORDERED** that:

1. The Report and Recommendations filed on April 6, 2007 (Doc. #64) is ADOPTED in full;
2. The parties' Joint Motion for Preliminary Approval of Settlement Agreement (Doc. #50) is GRANTED;

3. The parties' Agreed Motion to File Under Seal Exhibit A to Joint Motion for Preliminary Approval of Settlement Agreement (Doc. #63) is GRANTED;
4. The parties' Stipulated Motion for Certification of Class of Plaintiffs and Approval of Class Representative (Doc. #50) is GRANTED, and the Court preliminarily approves of the following putative class:

Those persons or entities who currently or previously invested in, were beneficial owners of or held LifeTime Capital viatical contracts or interests, including without limitation those who are subject to the claims procedure implemented by the Receiver in the case of *Davis v. LifeTime Capital, Inc.*, Case No. 3:04CV059, in the United States District Court for the Southern District of Ohio at Dayton.

5. This case is remanded to the United States Magistrate Judge for the purpose of conducting a fairness hearing and for re-consideration of, and Report and Recommendations regarding, the approval of the putative class set forth above as required by Fed. R. Civ. P. 23.
6. The fairness hearing should be scheduled by the United States Magistrate Judge on a date at least forty-five days after the date of this Decision and Entry is docketed for the purpose of allowing the Receiver sufficient time to give each Investor thirty-days notice of the proposed location, date, and time for the fairness hearing.



---

Walter Herbert Rice  
United States District Judge